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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/657,774

09/08/2003

Paul V. Cavallaro

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09/21/2004

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EXAMINER

MARTIR, LILYBETT

ART UNIT

PAPER NUMBER

2855

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/657,774

Applicant(s)

CAVALLARO ET AL.

Examiner

Lilybett Martir

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 is/are allowed.
- 6) ☒ Claim(s) 1,2,7,16,17 and 19 is/are rejected.
- 7) ☒ Claim(s) 3-6 and 9-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/8/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 16-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weldmann et al. (Pat. 4,488,444) in view of Leon (Pat. 4,911,004).

- With respect to claim 1 Weldmann et al. teaches an upper structure including an elongated beam 20, at least one support bracket 22 adjustably mountable along a longitudinal span thereof, and a plunger 27 pivotally mounted in said at least one upper support bracket (Col. 2, lines 32-39), said plunger 27 engageable in support of the specimen S and said upper structure engageable with the load application device 25 and 26 opposite said plunger 27; and a lower structure 10 spaced apart from said upper structure 20, said lower support structure including a support beam 10, at least one spacing member 50 mounted along a longitudinal span thereof, a lower support bracket 40, and a support 44 pivotally mounted in said lower support bracket to face said upper support structure and engageable with the specimen S as noted in Figure 1. Weldmann et al. fails to teach the supporting structure being a saddle or a device mounted as a support and often shaped to fit the object held

mounted in said at least one upper support bracket. Leon teaches v-shaped specimen gripping means as in elements 20 and 22 that function as a device mounted as a support and often shaped to fit the object held. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the teachings of the testing device of Weldmann et al. utilizing the teachings of the determining device of Leon by providing it with saddle or v-shaped specimen gripping means as in elements 20 and 22 that function as a device mounted as a support and often shaped to fit the object held to further improve the gripping and supporting features of said testing device therefore making said device more reliable.

- With respect to claim 16 Weldmann et al. teaches the utilization of bearing 41 between the bracket structure 40 and the upper support means 44. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the teachings of the testing device of Weldmann et al. as modified by Leon by also utilizing the bearing means in the upper support means to further facilitate the rotational movement between elements 22,24 and 27 by allowing the transmission of the desired load in order to make said device more accurate.

- With respect to claim 17 Weldmann et al. teaches the utilization of bearing 41 between the bracket structure 40 and the upper support means 44.
- With respect to claim 19 Weldmann et al. teaches upper longitudinal support means 20 for adjustably supporting at least one bracket 22 along a longitudinal span thereof, and a plunger 27 pivotally mounted in said at least one upper support bracket, said plunger 27 engageable in support of the specimen S and said upper structure engageable with the load application device opposite said plunger; and lower longitudinal support means 10 for supporting at least lower support bracket 40, said lower longitudinal support means spaced apart from said upper longitudinal support means and including a beam, at least one spacing member 50 adjustably mounted along a longitudinal span thereof, said at least one lower support bracket 40 mounted along a longitudinal span of said spacing member, and a saddle pivotally mounted in each said at least one lower support bracket to face said upper support means and engageable with the specimen. Weldmann et al. fails to teach the supporting structure being a saddle or a device mounted as a support and often shaped to fit the object held mounted in said at least one upper support bracket. Leon teaches v-shaped specimen gripping means as in elements 20 and 22 that function as a device mounted as a support and often shaped to fit the object held. It would have been obvious at the

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time the invention was made to a person having ordinary skill in the art to modify the teachings of the testing device of Weldmann et al. utilizing the teachings of the determining device of Leon by providing it with saddle or v-shaped specimen gripping means as in elements 20 and 22 that function as a device mounted as a support and often shaped to fit the object held to further improve the gripping and supporting features of said testing device therefore making said device more reliable.

3. Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weldmann et al. in view of Leon and further in view of Gravier (Pat. 6,079,247).

- With respect to claims 2 and 7, Weldmann et al. fails to teach said elongated beam of said upper and lower structure is an I-shape. Gravier teaches the utilization of an I-shaped frame beam as stable and commonly known in the art. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the teachings of the testing device of Weldmann et al. as modified by Leon and further utilizing the teachings of the bending machine of Gravier to further increase the reliability and stability of said device.

***Allowable Subject Matter***

4. Claim 18 is allowed. Claims 3-6 and 9-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims or if the

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limitations of said claim are inserted in the base claim including all of the limitations of the base claim and any intervening claims.


**Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lilybett Martir whose telephone number is (571)272-2182. The examiner can normally be reached on 9:00 AM to 5:30 PM.
6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (571)272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lilybett Martir  
Examiner  
Art Unit 2855

LCM



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